IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.161 OF 2004

Rajendra Gopinath Mahale, Applicant
Vs
Janardan Annasaheb Salunke & Anr Respondents.

Mr Uday Warunjikar, for the applicant.
Mrs M.M.Deshmukh, APP for the respondent

CORAM : D.B.BHOSALE, J.

DATED : 10th JULY, 2006

P.C.:

1. Heard Mr Warunjikar, learned counsel for the applicant and Mrs Deshmukh, learned APP for the State.

2. This is an application under section 378(3) of the Code of Criminal Procedure, seeking leave to file appeal against the judgment and order dated 14.8.2003 rendered by the Judicial Magistrate, First Class, C.R.No.4, Link-II, Pune, by which the respondent-accused, who was charged and tried under sections 341, 504 and 506 of IPC, has been acquitted. He was tried on the allegation that on 24.8.1999 at about 10.45 pm at flat no.125, Snehavardhan Society, No.1, Pune, the respondent-accused restrained him from entering into the premises consisting of two rooms, gave abuses and provocation and caused breach of peace as also hurt to him at the relevant time. According to the complainant, he was put in possession of the two rooms on the ground floor at Snehavardhan society in 1994 by the builder for which he had paid

Rs.87000/-. Mr Warunjikar, learned counsel for the applicant, invited my attention to the evidence of the wife of the complainant to show that they were put in possession of the said rooms in 1994. My attention was also drawn to the possession receipt dated 2.3.1994 as also to the spot panchnama (Exhibit-55), and on the basis of these documents he submitted that this material clearly establish that the complainant was in possession of the two rooms on the ground floor of which the respondent-accused took forcible possession and restrained the complainant from entering into those rooms on 24.8.199 at 10.45 pm. I perused the possession receipt (Exhibit-26) and also findings recorded by the court below and in particular paragraph 7 thereof. The possession receipt (Exhibit-26), on the basis of which the complainant claims that he was put in possession of the two rooms on the ground floor clearly show that he, in fact, was put in possession of the two rooms on the second floor. The rooms of which the accused was in possession at the relevant time are on the ground floor.Moreover,the person,who allegedly put the complainant in possession of the rooms on the ground floor, there is no material on record to show that he had legal authority to put the complainant in possession of the rooms on the ground floor. Insofar as other allegations

are concerned they cannot be said to have been proved beyond reasonable doubt. No independent witness was examined by the complainant to prove the allegations against the accused. The trial Court has appreciated the entire evidence on record in proper perspective and the findings recorded cannot be said to be perverse and unreasonable. The view taken by the trial Court is possible view and merely because other view, as contended by Mr.Warunjikar, learned counsel for the applicant, is possible that by itself would not be sufficient to grant leave to appeal under section 378 of the Code. In the circumstances, this application fails and is dismissed as such.

(D.B.BHOSALE,J.)